

REPLY COMMENTS OF THE ELECTRONIC PRIVACY INFORMATION CENTER

to the

FEDERAL COMMUNICATIONS COMMISSION

Petition for Rulemaking to Repeal 47 C.F.R. 42.6 (Retention of Telephone Records)

[WC Docket No. 17-130]

June 30, 2017

On August 4, 2015, Electronic Privacy Information Center (“EPIC”) and a coalition of civil society organizations, legal scholars, and technology experts submitted a petition asking the Federal Communications Commission (“FCC”) to repeal a regulation that requires telephone companies to retain the detailed call records of their customers.¹ By notice published on May 17, 2017, the FCC requested public comment on EPIC’s petition.² EPIC hereby submits these reply comments.

On June 16, 2017, the date comments were due, the FCC had received 38 comments on EPIC’s petition. All commenters agreed with EPIC that the FCC’s data retention rule no longer serves a useful purpose and should be repealed.

¹ EPIC, Petition to Repeal 47 C.F.R. § 42.6 (“Retention of Telephone Records”) (Aug. 4, 2015), <https://epic.org/privacy/fcc-data-retention-petition.pdf>.

² Comment Sought on EPIC et al. Petition for Rulemaking to Repeal 47 C.F.R. § 42.6 (“Retention of Telephone Records”), FCC, DA 17-472, WC Docket No. 17-130 (May 17, 2017).

Consumers Union and Privacy Rights Clearinghouse both observe in their comments that the FCC’s data retention rule violates the principle of data minimization.³ EPIC agrees. Data minimization is one of the core principles of the fair information practices that form the basis of the Privacy Act of 1974. The Privacy Act directs agencies to maintain in their records only the minimum amount of information “relevant and necessary” to accomplish their purposes.⁴ The FCC’s data retention rule requires providers to retain sensitive call data about individuals who are under no suspicion of wrongdoing, even after those individuals have canceled their accounts. As Consumers Union correctly states, “[t]his practice is contrary to what reasonable consumers would expect when they cancel a service and renders the consumer vulnerable to data breaches.”⁵

The comments filed with the FCC are unanimous in support of repealing the FCC’s mandatory data retention rule. EPIC asks the FCC to immediately issue a Notice of Proposed Rulemaking to repeal 47 C.F.R. § 42.6.

Respectfully Submitted,

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³ Comments of Consumers Union, *In re* EPIC et al. Petition for Rulemaking to Repeal 47 C.F.R. § 42.6 (“Retention of Telephone Records”), FCC, WC Docket No. 17-130 (June 16, 2017); Privacy Rights Clearinghouse, Comment Letter on EPIC Petition for Rulemaking to Repeal 47 C.F.R. § 42.6 (“Retention of Telephone Records”), FCC WC Docket No. 17-130 (June 16, 2017).

⁴ 5 U.S.C. § 552a(e)(1).

⁵ Consumers Union, *supra* note 3, at 3.